

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Barry Lawrence Martin,

Petitioner,

v.

**John J. Lamanna, Warden of FCI
Edgefield,**

Respondant.

C/A No. 4:05-1789-CMC-TER

OPINION AND ORDER

Plaintiff, who is incarcerated at the Federal Correctional Institution in Edgefield, South Carolina, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Respondent filed a motion to dismiss or, in the alternative, a motion for summary judgment on September 13, 2005. Since Plaintiff is proceeding *pro se*, he was specifically advised by court order of the summary judgment procedure and the possibility of dismissal of the case if no response was filed. Plaintiff failed to file a response.

In accordance with this court's order of reference, 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(d), this matter was referred to United States Magistrate Judge Thomas E. Rogers, III, for a Report and Recommendation.

This court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Based on his review of the record, the Magistrate Judge has recommended that this action be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff has filed no objections and the time for doing so has expired.

IT IS HEREBY ORDERED that this action is DISMISSED for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
April 27, 2006

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